

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	Docket 06-0525
	)	
Consideration of the federal standard on	)	
interconnection in Section 1254	)	
of the Energy Policy Act of 2005	)	

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**STAFF REPLY COMMENTS ON SECTION 16-701.5 OF THE PUA**

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The Staff of the Illinois Commerce Commission ("the Staff"), by and through its counsel, and pursuant to Section 200.800 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Comments on S.B. 0680, P.A. 95-0420, codified as Section 16-701.5 of the Illinois Public Utilities Act ("PUA")(220 ILCS 5/16-701.5).

**I. Whether The Commission Has Already Acted In A Manner That Meets The Exception Language Requirement**

ELPC argues that the 120 day time limit contained in the first paragraph of Subsection (h) applies to the Commission's effort to set interconnection standards, which in turn requires an emergency rule. Staff does not argue with the proposition that if the 120 day limitation applies to setting interconnection standards, that an emergency rule is likely the Commission's only viable option. ELPC's argument is attractive in that it best preserves scarce Commission resources during this busy period of deregulation in the electric industry. However, Staff does not find ELPC's argument compelling.

ELPC argues that the 120 days applies because of the statutory language that requires the Commission to have completed, not just have commenced, its consideration of interconnection standards. ELPC relies upon the statute's use of the word "and" in conjunction with the critical phrase "already acted" requiring the Commission to complete its action in interconnection standards within 120 days. ELPC interprets the exception to only apply to fully considered and completed actions of the Commission. As Staff noted in its Comments (at 11), if the General Assembly intended the 120 day time frame to apply only if the Commission had already fully determined all applicable interconnection standards, the exception would be unnecessary, or at the very least, would have been expressed in terms of completion rather than action upon its own initiative.

Putting aside for the moment the structural argument revolving around the word "and," Staff notes that the "completed acting" argument has an obvious logical inconsistency. ELPC appears to have identified the inconsistency and deals with it by using a creative argument. Assuming for argument sake that ELPC's interpretation of the statute is valid, the inconsistency is that if the Commission is required to complete its actions in setting interconnection standards to meet the threshold exception in Subsection (h), then under the requirements of EAct, the Commission could have merely considered setting interconnection standards but then decided not to establish interconnection standards. Ironically, this decision would have also relieved the Commission from setting any interconnection standards under the requirements of Section 16-701.5 of the PUA.

Having identified this inconsistency in their interpretation, ELPC adds the further requirement that, as a precondition to eligibility for the 120 day exception, the Commission must also meet the requirements of other interconnection language in Subsection (h).<sup>1</sup> Again, however, ELPC's interpretation could lead to unintended consequences. For instance, if the Commission had considered setting interconnection standards under EPCRA, and in fact had done so, but such standards did not address reasonable and fair fees, instead leaving it entirely to electric utilities to set interconnection fees, such standards would satisfy the threshold 120 day exception but would not have addressed all of the subjects ancillary to interconnection as identified in Subsection (h). Staff doubts this is a result that would satisfy ELPC.

Moreover, a few things are clear from the structure of Subsection (h). First, the exception language is contained in the first sentence. Second, the remaining language in Subsection (h) identifies certain elements of the standards that are associated with the actual physical interconnection into the electric utility

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<sup>1</sup> For ease of the reader, Staff again provides Subsection (h) in full:

(h) Within 120 days after the effective date of this amendatory Act of the 95th General Assembly, the Commission shall establish standards for net metering and, **if the Commission has not already acted on its own initiative**, standards for the interconnection of eligible renewable generating equipment to the utility system. The interconnection standards shall address any procedural barriers, delays, and administrative costs associated with the interconnection of customer-generation while ensuring the safety and reliability of the units and the electric utility system. The Commission shall consider the Institute of Electrical and Electronics Engineers (IEEE) Standard 1547 and the issues of (i) reasonable and fair fees and costs, (ii) clear timelines for major milestones in the interconnection process, (iii) nondiscriminatory terms of agreement, and (iv) any best practices for interconnection of distributed generation.

grid system. One reasonable argument would be that however the Commission sets interconnection standards, the standards must address the associated issues identified in Subsection (h). Another would be that if the Commission has already acted on its own initiative, it need not address the identified issues. ELPC's interpretation that standards addressing each of the identified ancillary issues must have been completely acted upon to meet the exception requirement of "already acted" is not supported by the language of Subsection (h).

There simply is no language *linking* the exception language to the subject issues that the rest of Subsection (h) identifies. In order to reach ELPC's conclusion, one must read into the 120 day exception (highlighted in bold above) language linking the exception language to the rest of Subsection (h). Interconnection standards are referenced in both parts (the first sentence and the remainder of Subsection (h)), but nothing ties them together.

The first sentence of Subsection (h) contains both the directive to set interconnection standards, and the "unless the Commission has already acted" exception to this directive. The remainder of Subsection (h), in Staff's view, does not aid in interpreting the first sentence. It only identifies certain specific limits that the standard must meet (feasibility studies, interconnection agreements, etc.). These are the issues that are being addressed by the Commission within the context of the ongoing workshops. See *also* Ameren Comments, at 2; ComEd Comments, at 2.

As is clear in the first sentence, when the General Assembly required the Commission to set *net metering* standards it specified exactly how to do it.

ELPC's comments do not demonstrate that when it came to requiring the Commission to set *interconnection* standards the General Assembly would inadvertently leave out clear language mandating what the Commission must do. Yet, the General Assembly did not include such language in its exception; instead it employs the phrase "if the Commission has not already acted." However, attractive certain elements of ELPC's position may be to Staff, it simply cannot recommend ELPC's interpretation of the Act to the Commission.

Regarding ELPC's structural argument, which focuses on the word "and," ELPC ignores what immediately follows the "and," which is the exception language, then "standards for the interconnection ... ." A structural argument appears to undermine ELPC's position due to its placement in the first sentence. In Staff's view, the better argument is the exception language, confined within commas, and breaking in upon what otherwise would be the clear directive to set interconnection standards within 120 days, means that the Commission need only have "already acted" but not necessarily have completed acting in setting interconnection standards. The fact that the Commission had "already acted" in setting interconnection standards relieves the Commission of the 120 day limitation, regardless of the language beyond the first sentence, because there is simply nothing linking the exception to the rest of Subsection (h). The remaining language in Subsection (h) identifies certain specific standards for the actual physical interconnection into the electric utility grid system. These identified issues are precisely the issues the Commission is already acting on in addressing them in ongoing workshops.

## **II. Whether SB 680 Is Only Applicable Up To Customers With Up 2,000 Kw Generators**

ELPC argues that Subsection (h) “effectively requires the Commission to develop interconnection standards applicable to all state-jurisdictional facilities, which in some cases may be substantially larger than 2,000 kW.” ELPC Comments, at 6-7. In order to reach this conclusion, ELPC notes that the 2,000 kW limitation is not found in Subsection (h). *Id.* Although Subsection (h) does not include the 2,000 kW limitation, it does require the Commission to set standards, if the Commission “has not already acted,” for the interconnection “of *eligible renewable generating equipment.*” As ELPC points out, “[a]lthough the definition of eligible ‘customers’ for the purposes of net metering is limited to those customers operating generators with a rated capacity of no more than 2,000kW, the definition of eligible ‘facilities’ is not limited by capacity.” *Id.*

As both Staff and ELPC point out, the “General Assembly was aware that the Commission was already considering the establishment of interconnection standards in the instant docket pursuant to the federal EPCAct. ELPC Comments, at 5; Staff Comments, at 16. Under EPCAct, the Commission was “considering” setting interconnection standards for co-generators regardless of size or power sources.

As noted above, when the General Assembly wanted to set net metering standards it clearly knew how to do so. It is only in regard to the establishment of interconnection standards where parties have differing interpretations of SB 680. For example, SB 680 provides no exception for setting net metering standards for those generators over 2,000kW within 120 days, while there is an exception

for setting interconnection standards within 120 days. The parties merely differ on how the exception works. Consequently, SB 680 reflects the General Assembly's primary focus that net metering standards for renewable powered generators with a rated capacity of no more than 2,000kW be established within 120 days. In essence, SB 680 reflects the General Assembly's priority to establish net metering standards within 120 days and only for 2,000 kW and below generators powered by renewable energy sources.

For interconnection, SB 680 reflects a different priority, and, in Staff's view, a lower priority in light of the fact that it provided an exception to the 120 day limit where there is none for net metering. The General Assembly was also aware that there was an ongoing interconnection rulemaking docket. SB 680, thus, can be viewed as an intervening Act that overlays the interconnection authority and the discretion that the Commission was already exercising under EAct. The Commission has always had the authority and discretion to decide that it needed to address interconnection standards for generators, however powered, with a larger rated capacity than 2,000 kW. The issue is, whether, in light of the exception as addressed above, SB 680 reflects the General Assembly's priority that interconnection standards be implemented within 120 days, and for generators different than those clearly defined by the General Assembly for net metering. SB 680, in Staff's view, simply contains no evidence of such a priority.

Staff, consequently, agrees with ComEd and Ameren that *if* the Commission were to decide that it needed to implement interconnection

standards within 120 days, then “such action could only apply to matters addressed in this Docket that specifically apply to net metering – i.e., interconnection of facilities with capacity below 2MW, etc.” Ameren Comments, at 3; ComEd Comments, at 3 (“[I]f the Commission concludes that the statute requires it to complete its consideration of interconnection practices in 120 days, it should be clear that the requirement would apply at most to potential net metering situations – i.e., ‘renewable’ generators no larger than 2,000 kW capacity, located on the customer’s premises, and intended primarily to offset the customer’s load requirements.”).

### **III. Conclusion**

Staff welcomes this opportunity to provide these Reply Comments in the hope that the Comments will be of some assistance to the Administrative Law

Judge and Commission in interpreting certain aspects of the language contained in Section 16-701.5.

Respectfully submitted,

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